

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION §
OF THOMAS R. MILLER FOR A WRIT § No. 144, 2012
OF MANDAMUS §

Submitted: April 2, 2012
Decided: April 12, 2012

Before **HOLLAND, BERGER**, and **JACOBS**, Justices.

ORDER

This 12th day of April 2012, upon consideration of the petition of Thomas Miller for an extraordinary writ of mandamus and the State's motion to dismiss, it appears to the Court that:

(1) The petitioner, Thomas Miller, seeks to invoke the original jurisdiction of this Court to issue a writ of mandamus directing the Sentencing Accountability Commission to correct the Superior Court's sentencing order to impose the minimum presumptive sentence in his case. The State of Delaware has filed a response and motion to dismiss Miller's petition. After careful review, we find that Miller's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be DISMISSED.

(2) The record reflects that a Superior Court jury found Miller guilty in 1994 of first degree unlawful sexual intercourse and first degree burglary. The Superior Court sentenced Miller to life imprisonment on the

sexual assault conviction and to eight years in prison on the burglary conviction. This Court affirmed Miller's convictions and sentence on appeal.¹ Since then, Miller has filed numerous unsuccessful petitions seeking various forms of postconviction relief and modifications to his sentence. In his latest petition for a writ of mandamus, Millers asks this Court to direct the Sentencing Accountability Commission to correct his sentence to reduce the maximum term of incarceration, which was imposed by the Superior Court, to the minimum term of incarceration, which is the presumptive sentence provided for in the SENTAC guidelines.

(3) This Court has authority to issue a writ of mandamus only when the petitioner can demonstrate a clear right to the performance of a duty, no other adequate remedy is available, and the trial court arbitrarily failed or refused to perform its duty.² An extraordinary writ will not be issued if the petitioner has another adequate and complete remedy at law to correct the act of the trial court that is alleged to be erroneous.³ More importantly, the Court's jurisdiction to issue an extraordinary writ is limited to instances when the respondent is a court or judge thereof.⁴

¹ *Miller v. State*, 1995 WL 301379 (Del. May 9, 1995).

² *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

³ *Canaday v. Superior Court*, 116 A.2d 678, 682 (Del. 1955).

⁴ *In re Hitchens*, 600 A.2d 37, 38 (Del. 1991).

(4) This Court has no jurisdiction to issue a writ of mandamus to the Sentencing Accountability Commission.⁵ Moreover, to the extent Miller is requesting that the Superior Court be directed to correct his sentence, Miller has failed to establish that he is entitled to a sentence modification or that he has no other adequate remedy at law.

NOW, THEREFORE, IT IS ORDERED that Miller's petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁵ *Id.*